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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/755,408	01/05/2001	Robert I. Nurse	7903M	5236

7590

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EXAMINER

CASTELLANO, STEPHEN J

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 11/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/755,408

Applicant(s)

NURSE, ROBERT I.

Examiner

Stephen J. Castellano

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 August 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3-5,8-14,16,17 and 21-34 is/are pending in the application.
- 4a) Of the above claim(s) 1,3-5,8-14,16,17 and 28-33 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 21-27 and 34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1,3-5,8-14,16,17 and 21-34 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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The present invention is directed to a container which consists of (1) a tray consisting of sidewalls, floor pan and lid and (2) a reinforcing structure comprising a floor support and hinged strut panels. There is some confusion in the claims with respect to the term "container."

Sometimes the word "container" refers to the entire structure of the tray and the reinforcing structure while at other times the word "container" has a more specific meaning to the tray only which can be released and removed from the strut panels and the reinforcing structure.

Claim 1 states that the struts releasably engage said container. Claim 10 is similarly limited. Claim 28 is also similarly limited by the limitation "said reinforcing panels releasably engage said container." Claims 1, 10 and 28 are interpreted by the more specific meaning of the term "container," wherein "container" means a tray with sidewalls and floor pan. This application properly supports a removable reinforcing structure from the tray. However, no claims to this removable strut panel specie were present in the claims as previously amended at the time of the last Office action mailed May 6, 2005. Claims directed to a non-removable specie were present. For example, claim 1 stated that the struts were removable from the sidewalls without separation from the container. Claims 1, 10, 28 and their dependents are properly restrictable by original presentation as pertaining to a non-elected specie.

Claim 21 remains as the only independent claim which is directed to the elected specie since it doesn't mention that the struts are removable from the container. Claim 21 will be broadly interpreted such that the container encompasses both the tray and the reinforcing structure.

Claims 2, 6, 7, 15 and 18-20 are canceled. Claims 1, 3-5, 8-14, 16, 17 and 21-34 are pending.

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Newly submitted claims 1, 3-5, 8-14, 16, 17 and 28-33 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: These claims are directed to a non-elected specie including a strut panel which is removable from the container.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 1, 3-5, 8-14, 16, 17 and 28-33 have been withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claims 21-27 and 34 will be treated on their merits.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 21, 22, 24-27 and 34 are rejected under 35 U.S.C. 102(b) as being anticipated by Harrison.

Harrison discloses a container (everything disclosed) having sidewalls, floor pan and a cardboard case with four sides, each side forming a reinforcing panel releasably connected to the sidewalls as shown in Fig. 2. The connection of the panel to the sidewall is releasable from the sidewall without separation from the container because the panel is considered to be part of the container and therefore, non-separable.

Claims 21-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Bolton.

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The explanation of this rejection is contained in the action mailed May 6, 2005.

Claims 21-23 are rejected under 35 U.S.C. 102(e) as being anticipated by Quirion.

The explanation of this rejection is contained in the action mailed May 6, 2005.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 24-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bolton or Quirion in view of Harrison.

The explanation of this rejection is contained in the action mailed May 6, 2005.

Claims 22 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harrison in view of Artusi.


Harrison discloses the invention except for the articulable connection of the panel to the floor support juxtaposed to the floor panel. Artusi teaches the tray and reinforcing structure with the reinforcing panel articulably joined to said container juxtaposed the floor pan. It would have been obvious to provide the articulable connections as motivated by the need for a collapsing reinforcing structure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is 571-272-4535. The examiner can normally be reached on M-Th 6:30-5.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Stephen J. Castellano  
Primary Examiner  
Art Unit 3727

sjc